

ON PETITION FOR REHEARING

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 99-6521

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

DELMAR E. WALTON,

Defendant - Appellant.

Appeal from the United States District Court for the Northern District of West Virginia, at Wheeling. Frederick P. Stamp, Jr., Chief District Judge. (CR-94-50066, CA-97-135-5)

Submitted: November 30, 1999

Decided: December 21, 1999

Before WIDENER and KING, Circuit Judges, and PHILLIPS, Senior Circuit Judge.

Dismissed by unpublished per curiam opinion.

Delmar E. Walton, Appellant Pro Se. Robert H. McWilliams, Jr., Assistant United States Attorney, Wheeling, West Virginia, for Appellee.

Unpublished opinions are not binding precedent in this circuit. See Local Rule 36(c).

PER CURIAM:

Delmar E. Walton petitions for rehearing and rehearing en banc of the panel's decision dismissing his appeal of the district court's denial of his motion filed under 28 U.S.C.A. § 2255 (West Supp. 1999). Because the panel's opinion incorrectly denied relief on two ineffective assistance of counsel claims on the basis of waiver,* we grant Walton's rehearing petition, though we deny his petition for en banc consideration.

Our review of the record, pleadings, and district court's opinion convinces us that these ineffective assistance of counsel claims are meritless. See Strickland v. Washington, 466 U.S. 668, 687-91 (1984); Holdren v. Legursky, 16 F.3d 57, 63 (4th Cir. 1994); United States v. Agofsky, 20 F.3d 866, 871-72 (8th Cir. 1993). As noted in the panel's original opinion, we find no reversible error in the district court's denial of relief on Walton's remaining claims. Accordingly, we deny a certificate of appealability and dismiss the appeal.

We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the

* The claims involved counsel's failure to object to a jury instruction and failure to object to allegedly perjured testimony of a Government witness.

court and because argument would not significantly aid the decisional process.

DISMISSED